

FILED

FEB 21 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADOLFO VILLAFLOR,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

Nos. 04-72222
05-73019

Agency No. A38-106-558

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 13, 2006**

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Adolfo Villaflor, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ") order denying Villaflor's motion to reopen to introduce

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

new evidence and the BIA's order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review the denial of a motion to reopen for abuse of discretion. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The IJ did not abuse his discretion in denying Villaflor's motion to reopen to introduce newly discovered evidence because the proffered evidence was available at the time of his removal hearing. *See* 8 C.F.R. § 1003.2(c)(1); *Ordonez v. INS*, 345 F.3d 777, 784-85 (9th Cir. 2003) (explaining that a motion to reopen must be supported by new evidence).

The BIA did not abuse its discretion in denying as untimely Villaflor's motion to reopen alleging ineffective assistance of former counsel, because Villaflor failed to explain why the motion was filed more than a year after he retained new counsel. *See Iturribarria*, 321 F.3d at 897-98 (holding that a petitioner must act with due diligence when pursuing an ineffective assistance of counsel claim to benefit from equitable tolling of deadlines).

PETITION FOR REVIEW DENIED